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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120316196-2195-01]

RIN 0648-BB89

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Interim Action; Withdrawn

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; withdrawal.

SUMMARY: NMFS issued interim measures for the 2012 Gulf of Maine (GOM) Atlantic cod fishery on April 3, 2012. These measures were intended to become effective May 1, 2012; however, the authority NMFS uses to issue interim measures requires that interim measures become effective on publication in the Federal Register. The interim rule published on April 3, 2012, is being withdrawn so NMFS may re-issue the same measures on May 1, 2012, to ensure that the effective date is consistent with both NMFS' authority and the start of the 2012 GOM cod fishing year.

DATES: The interim rule published on April 3, 2012, at 77 FR 19944 is withdrawn as of May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281-9104.

SUPPLEMENTARY INFORMATION: NMFS published a temporary rule containing interim measures to implement GOM cod catch limits and recreational fishing rules for the 2012 fishing year on April 3, 2012 (77 FR 19944). The interim measures were issued under authority of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and were designed to become effective on May 1, 2012, the first day of the 2012 GOM cod fishing year. However, the effective date specified in the published interim rule is inconsistent with NMFS' authority provided by the MSA. The MSA language that authorizes NMFS to issue interim measures under specific conditions is described in detail in the April 3, 2012, rule and not repeated here.

The MSA authority for interim rules explicitly specifies that measures are effective upon publication in the Federal Register and may remain in place for no more than 180 days. NMFS has authority to extend interim measures for an additional 186 days under the MSA-granted authority. This provides for up to a full year (365 days) of interim measures. NMFS indicated that the interim measures issued in the April 3 rule would be extended by a subsequent rule so that measures remain effective for the duration of the 2012 fishing year which runs from May 1, 2012 to April 30, 2013. The initial 180 day effective period in the April 3 rule was calculated moving forward from the day the rule published, even though the rule states it is effective on May 1. Thus, the initial 180 day period specified in the April 3 interim rule ends on September 30, 2012. An extension of the interim measures for an additional 186 days from September 30, 2012 would be April 3, 2013. This would mean that 27 days of the 2012 fishing year would not have catch and management measures in place for GOM cod.

NMFS had published the measures in advance of the fishing season to provide advance notice to fishery participants and the interested public. Because the rule has published and the

effective date outlined in the DATES section is inconsistent with NMFS' authority and creates a situation that would result in an unregulated portion of the 2012 fishing year, the measures and modifications to the Code of Federal Regulations (CFR) implemented by the rule are being withdrawn. NMFS will re-issue the exact measures and regulations previously published on April 3, 2012, for publication in the Federal Register on May 1, 2012. This ensures the effective date begins on the start of the fishing year and is consistent with the MSA section 305(c) authority that specifies interim rules are effective upon publication. This will result in the interim measures expiring on October 27, 2012. NMFS may then be able to extend the interim measures for an additional 186 days to ensure the measures are effective for the entire May 1, 2012-April 30, 2013 fishing year.

NMFS recognizes the withdrawal and re-publication of measures may cause some confusion for fishermen and those interested in the 2012 GOM cod fishery. Because the effective date in the April 3 rule is inconsistent with NMFS authority, it is not possible to simply correct the language. By withdrawing and re-issuing the interim measures for publication in the Federal Register on May 1, 2012, NMFS will ensure that the measures are effective at the start of the fishing year, consistent with both the intent of the previously published interim rule and the MSA authority for issuing interim rules. Furthermore, this withdrawal and re-issuance of the GOM cod 2012 fishing year interim measures will ensure that NMFS may use the MSA authority for a full fishing year, as intended and requested by the New England Fishery Management Council (Council). NMFS intends to explain the need for the withdrawal and re-issuance to the Council, fishery participants, and the interested public.

For the reasons outlined here, the publication on April 3, 2012 (77 FR 19944), implementing temporary rules to 50 CFR part 648 with an effective date of May 1-September 30, 2012, is withdrawn.

As previously stated, NMFS intends to re-issue the measures contained in the April 3, 2012 (77 FR 19944), on May 1, 2012.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 25, 2012

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